

CITY COUNCIL MINUTES

April 22, 2013

The Honorable Council of the City of Evansville met on regular session at 5:30 p.m. on Monday, April 22, 2013 in the City Council Chambers, Room 301 Civic Center Complex, Evansville, Indiana, with President Connie Robinson presiding. The following business was conducted.

These minutes are not intended to be a verbatim transcript. Audiotapes of this meeting are on file in the City Clerk's Office.

ROLL CALL:

Present: Mosby, Brinkerhoff-Riley, Friend, Lindsey, Adams, O'Daniel, Weaver, Robinson.

Absent: M^cGinn

There being eight (8) members present and one (1) member absent and eight (8) members representing a quorum, I hereby declare this session of the Common Council officially open.

PLEDGE OF ALLEGIANCE

This evening the pledge of allegiance is led by Councilwoman Mosby.

Fellow Councilmen and those in the audience, welcome to the April 22, 2013 meeting of the Common Council.

TEEN ADVISORY COMMITTEE:

Erica Reitz, Emily Walden, Allison Reitz, Zach Bouchie, Ben Walden

COUNCIL ATTORNEY

This evening Scott Danks is City Council Attorney.

SERGEANT AT ARMS

This evening Officer Hasler is Sergeant at Arms.

READING AND AMENDMENT OF MINUTES

Is there a motion to approve the minutes of the April 8, 2013 meeting of the Common Council as written?

Councilman Adams moved and Councilwoman Mosby seconded the motion to approve the minutes of the regular meeting of the Common Council held April 8, 2013 as written. Voice vote. So ordered.

REPORTS AND COMMUNICATIONS

In Your April 19th Packet:

- *City Council Meeting Agenda for April 22, 2013.
- *Committee Meeting Schedule.
- *City Council Meeting Minutes dated April 8, 2013.
- *Ordinance F-2013-4.
- *Legal Aid Statistics for March, 2013.

ON YOUR DESK THIS EVENING:

- *Resolutions C-2013-10 and C-2013-11

President Robinson: Can I have a motion to receive, file and make these reports and communications a part of the minutes of the meeting?

Councilman Weaver moved and Councilman Friend seconded the motion to receive, file and make these reports and communications a part of the minutes of the meeting. Voice vote. So ordered.

CONSENT AGENDA

FIRST READING OF ORDINANCES OR RESOLUTIONS

ORDINANCE F-2013-4 FINANCE FRIEND

An Ordinance of the Common Council of the City of Evansville authorizing transfers of appropriations, additional appropriations and repeal and re-appropriation of funds for various city funds

President Robinson: Is there a motion to adopt the Consent Agenda as written?

Councilman Friend moved and Councilwoman Mosby seconded the motion to adopt the Consent Agenda as written. Voice vote. So ordered.

CONSENT AGENDA

SECOND READING OF ORDINANCES AND RESOLUTIONS

ORDINANCE G-2013-5 FINANCE FRIEND

An Ordinance authorizing the City of Evansville, Indiana to issue its "Economic Development Revenue Note, Series 2013 (University of Evansville Project)" and approving and authorizing other actions in respect thereto

ORDINANCE F-2013-2 (as amended) FINANCE FRIEND

An Ordinance of the Common Council of the City of Evansville Authorizing Transfers of Appropriations, Additional Appropriations and Repeal and Re-Appropriation of Funds for Various City Funds

ORDINANCE F-2013-3 FINANCE FRIEND

An Ordinance of the Common Council of the City of Evansville Authorizing Repeal, Re-Appropriations and Additional Appropriations of funds within a city department (DMD)

RESOLUTION C-2013-9 FINANCE FRIEND

A Resolution of the Common Council of the City of Evansville ratifying, confirming, authorizing and approving an agreement between the City of Evansville Metropolitan Evansville Transit System (METS) and the Chauffeurs, Teamsters and Helpers Local Union No 215. (January 1, 2013 through December 31, 2015)

COMMITTEE REPORTS:

FINANCE COMMITTEE:

CHAIRMAN FRIEND

Councilman Friend: Yes, Madam President, your Finance Committee met this evening to hear Ordinances G-2013-5, F-2013-2 as amended twice, F-2013-3, and Resolution C-2013-9, and all come forward with a do-pass recommendation.

President Robinson: Can I have a motion to adopt Committee Reports?

Councilman O'Daniel moved and Councilwoman Mosby seconded the motion to adopt the committee Reports and move these Ordinances and Resolution to Third Reading. Voice vote. So ordered.

REGULAR AGENDA

THIRD READING OF ORDINANCES AND RESOLUTIONS

ORDINANCE G-2013-5 FINANCE FRIEND

An Ordinance authorizing the City of Evansville, Indiana to issue its "Economic Development Revenue Note, Series 2013 (University of Evansville Project)" and approving and authorizing other actions in respect thereto

President Robinson: Is there a motion to adopt Ordinance G-2013-5?

Councilman Weaver moved and Councilman Friend seconded the motion to adopt Ordinance G-2013-5 and call the roll.

ROLL CALL

Ayes: Mosby, Brinkerhoff-Riley, Friend, Lindsey, Adams, O'Daniel, Weaver, Robinson

Absent: M^cGinn

President Robinson: There being eight (8) Ayes and zero (0) Nays, Ordinance G-2013-5 is hereby declared adopted.

REGULAR AGENDA

THIRD READING OF ORDINANCES AND RESOLUTIONS

ORDINANCE F-2013-2 (as amended) FINANCE FRIEND

An Ordinance of the Common Council of the City of Evansville Authorizing Transfers of Appropriations, Additional Appropriations and Repeal and Re-Appropriation of Funds for Various City Funds

President Robinson: Is there a motion to adopt Ordinance F-2013-2 as amended and call the roll?

Councilman Friend moved and Councilwoman Brinkerhoff-Riley seconded the motion to adopt Ordinance F-2013-2 as amended and call the roll.

ROLL CALL

Ayes: Mosby, Brinkerhoff-Riley, Friend, Lindsey, Adams, O'Daniel, Weaver, Robinson

Absent: M^cGinn

President Robinson: There being eight (8) Ayes and zero (0) Nays, Ordinance F-2013-2 as amended is hereby declared adopted.

REGULAR AGENDA

THIRD READING OF ORDINANCES AND RESOLUTIONS

ORDINANCE F-2013-3 FINANCE FRIEND

An Ordinance of the Common Council of the City of Evansville Authorizing Repeal, Re-Appropriations and Additional Appropriations of funds within a city department (DMD)

President Robinson: Is there a motion to adopt Ordinance F-2013-3?

Councilwoman Mosby moved and Councilwoman Brinkerhoff-Riley seconded the motion to adopt Ordinance F-2013-3 and call the roll.

ROLL CALL

Ayes: Mosby, Brinkerhoff-Riley, Friend, Lindsey, Adams, O'Daniel, Weaver, Robinson

Absent: M^eGinn

President Robinson: There being eight (8) Ayes and zero (0) Nays, Ordinance F-2013-3 is hereby declared adopted.

REGULAR AGENDA

THIRD READING OF ORDINANCES AND RESOLUTIONS

RESOLUTION C-2013-9 FINANCE

FRIEND

A Resolution of the Common Council of the City of Evansville ratifying, confirming, authorizing and approving an agreement between the City of Evansville Metropolitan Evansville Transit System (METS) and the Chauffeurs, Teamsters and Helpers Local Union No 215. (January 1, 2013 through December 31, 2015)

President Robinson: Is there a motion to adopt Resolution C-2013-9?

Councilman Weaver moved and Councilwoman Mosby seconded the motion to adopt Resolution C-2013-9 and call the roll.

ROLL CALL

Ayes: Mosby, Brinkerhoff-Riley, Friend, Lindsey, Adams, O'Daniel, Weaver, Robinson

Absent: M^eGinn

President Robinson: There being eight (8) Ayes and zero (0) Nays, Resolution C-2013-9 is hereby declared adopted.

RESOLUTION DOCKET

RESOLUTION C-2013-10 (Docket)

COUNCIL AS A WHOLE

A Resolution of Support of Land Based Casino Operations and Exemptions from Gaming Tax Calculation on Free Play Credits

President Robinson: We have before us tonight a resolution supporting land-based casino. After talking to the majority of the Council members, they felt that we need to support Casino Aztar and then also if the casino was land-based, it's a lot harder to move than it is with the boat. So we wanted to send this to the State legislator and show that were in support of this. Are there any questions or discussion?

Councilman Friend: I think the people need to know that Kentucky is probably going to bring in casinos. Those are coming around the bend. Connie you and I have met with them, what's going on over at Ellis Park. The different venue...this form of slot machines they have at Ellis, is challenging them and we need to understand we need to support our boat.

The other thing I got concerned about, which I heard that based upon a 2002...Russ, you may be able to tell us if it's true or not...but the legislature was going to renege off the 2002 level of the entrance fees as we used to pay at that point in time. That was a 40 million dollar number and the State up there said they were getting tired of augmenting local boats at that level. That only means that this boat will be challenged as the years go by.

I don't know if there's been a change of that. You guys...Steve you may have had something you can bear on that with us.

Steve Schaefer: Councilman Friend, that provision has been taken out for the time being. Unfortunately I think it's going to go 589, 598. The bill has changed a lot since it was first introduced. Thankfully, members of our delegation, Representative Crouch has been very helpful with that provision. We support the land-based option just as you do and think it's something that Aztar supports so we support you in that.

Hopefully in the last week of Session a lot of things can change in Conference Committee. Hopefully nothing too drastic that will have a negative impact on our boat and riverboats in general in the State but we are watching it and our legislatures, you know, we've been communicating with them so I'm sure they'll appreciate your resolution.

President Robinson: Well with the land-based casino that will create additional jobs; economic development, and we all know that after our meeting with Mr. Brown that the boat is getting older and water and metal don't last long together and eventually they would have to purchase a new boat, you know, so we'd rather have them have a land-based casino.

Can I have a motion for...

Councilman Friend: So moved.

President Robinson: Anyone in the audience...

Councilman Weaver: Second.

President Robinson: I'm sorry, anyone in the audience would like to speak for or against for or against this resolution?

Councilman Friend moved and Councilman Weaver seconded the motion to adopt Resolution C-2013-10. Voice vote. So ordered

President Robinson: Okay, so we'll send this to the legislature.

And the next one is Council as a Whole but Councilwoman Mosby is always thoughtful when it comes to this and she sent out an email asking that we support the victims of the Boston Marathon.

RESOLUTION DOCKET

RESOLUTION C-2013-11 (Docket)

COUNCIL AS A WHOLE

A Resolution of Support of the Victims of the Boston Marathon Incident of April 15, 2013 and the Citizens of Boston and all Emergency Response Personnel

President Robinson: Are there any comments or anything for this? Anyone in the audience that would like to speak for it or against it? Councilman O'Daniel?

Councilman O'Daniel: Not for but something we didn't put in here because I think it was probably late in the game when it was done but the brave efforts of all the police and fire personnel as well as the FBI in bringing those individuals to justice and getting them arrested. I think it is quite dramatic to watch it unfold in real time and it's amazing what we can do when we put our mind to it in trying to get bad people off the street so...

Counsel Danks: Councilman O'Daniel if I may, I drafted this and I agree with you, it should have included but at the time it was drafted, they had not yet apprehended the suspects.

Councilman Adams: My kin in Boston relayed to me that it was almost like World War II in terms of its unity, social unity; a very unique experience for the people.

President Robinson: Okay, is there a motion to adopt Resolution C-2013-11?

Councilwoman Mosby moved and Councilman Weaver seconded the motion to adopt Resolution C-2013-11. Voice vote. So ordered

MISCELLANEOUS BUSINESS

There will be a Special Meeting of the City Council next Monday, April 29, 2013 at 5:30 in Room 301 to discuss the proposed new downtown hotel and the proposed Indiana University Medical School in Evansville.

Please get the word out to the public. This is the public's chance to ask questions and hear what is going on so we ask everybody to please come out. This is a great opportunity that this Administration is providing the public with, along with City Council. We will have the Mayor here to give a presentation, the hotel developer, and the financial people. Everyone will be here in town on the 29th so if you have anything, if you have any questions about this venture, probably one of the largest ones we've had in a while in this City, or the largest, and we need everybody to come out and be either for it or against it.

Councilman Adams: Are we going to discuss the Johnson Control thing sometime? I thought we were going to do that tonight.

Councilman O'Daniel: Well and I was going to ask our attorney...there's something that I brought up and just for the sake of disclosure, a couple of Council persons and myself met with Dave Garrett, who had an opportunity to look at some numbers that had been presented to IURC and at least I left that meeting with a lot more questions than answers. I know that that was approved by the IURC on March 27th and generally have some time to decide whether are not we are going to appeal or whether we have standing to appeal. I spoke with another attorney that thinks we may have standing as a Body Politic under Chapter 8 but I didn't know what your...if you'd had an opportunity to look at that any deeper...

Counsel Danks: I have *(Inaudible)*.

Councilman O'Daniel:...because that 30-day window would be closing, well, before our next meeting.

Counsel Danks: It does, it does. And yes, I do know that the Council can appeal that but I don't know that the...procedurally, I don't know if the Council is actually prepared to even that as the Council as a Whole at this point in time. We really haven't had a presentation before the Council on Johnson Controls or...

Councilman O'Daniel: Perhaps, and you know, I mean, we can always file a Notice of Appeal...

Counsel Danks: We can do that.

Councilman O'Daniel:...to preserve our rights...

Counsel Danks: We can do that.

Councilman O'Daniel:...if we want to do that and we could withdraw it such as the appeal that the Administration had previously of the denial. They had appeals and then withdrew the appeal in October of last year. I just think it would be prudent, otherwise we may waive the argument if ultimately it's, you know, whatever decision is ultimately made.

Councilwoman Mosby: Have you spoken with Johnson Controls about your concerns or what you found meeting with Dave Garrett?

Councilman O'Daniel: Well I had an opportunity to meet with him and a couple of other Council members. I don't know if that same offer has been extended to you yet or not. I don't know.

President Robinson: Can I...I talked to David Garrett before I came in here, and let me get this cause David Garrett spoke with some Council people as a private citizen, not as our Consultant because this is totally different. He did this as a private citizen and he talked to who he wanted to talk to as a private citizen. So if anybody didn't get to talk to David Garrett, you know...

Councilman Lindsey: I met with him.

President Robinson: Okay. So you know David did this as a private citizen because that's not part of his consulting fee with us.

Counsel Danks: But I think that he's extended that to all Council members, is that correct?

President Robinson: No that's not correct.

Counsel Danks: It's not correct?

Councilman Adams: Well if I understand my colleague, he is saying we can put a...

Counsel Danks: I can file a Notice of Appeal that if Councilman O'Daniel is correct, I can file a Notice of Appeal; we can always withdraw that. We don't actually initiate the process. And then after I file my Notice then we have 30 days from that time to perfect the appeal. So we can always withdraw that or proceed with it but it does *(Inaudible)*.

President Robinson: I think Steve Schaefer wants to say something.

Steve Schaefer: Thanks Madam President. I was just going to mention we had offered to do a presentation on May 6th if the Council...

President Robinson: That's not a Council night.

Steve Schaefer: Oh I mean whenever the first meeting is. I'm not sure.

(Inaudible)

Steve Schaefer: We just wanted to allow enough time for the attorneys and JCI to respond to all the questions that Council members had before doing a presentation so that you could ask all those questions during a meeting and we didn't want to take...have a vote the same night as the presentation, so whatever your pleasure. We just wanted to get the hotel presentation done and then do JCI just to separate the issues.

Councilman Adams: So when would be the actual vote by the City Council on this particular issue?

Steve Schaefer: Whenever...it wouldn't be the same night as the presentation. Probably at the next meeting or whenever you choose.

Councilman Adams: Would we still be able to have coverage by then?

(Inaudible)

Councilman Friend: We need to keep that option open.

Councilman Adams: If we put it in by Friday do we still have the coverage under the timeline that he's discussing where we have two weeks from the 13th of May?

Counsel Danks: I'm sorry, your presentation is when?

Councilman Adams: The 13th of May.

Steve Schaefer: I just threw that out there.

Counsel Danks: I think it should be expedited because I can tell you from...I can file my notice immediately. I can file it tomorrow. I will get it up to that 30-day period to give us more time but once I do that I need to file in appellant brief within 30 days and so I can't wait until a few days before my deadline to start working on my appellant brief. There's probably a good 100 to 150 hours involved in preparation for that brief.

Councilman Adams: So you are suggesting that perhaps on the 13th we have this presentation and a vote?

President Robinson: Well if you read the emails I think Allen Mounts sent everyone, he was saying that he wanted to...he wanted to give a presentation but he was not ready for us to vote. He said on May the 6th, presentation...

Councilman Adams: I'm not really caring about what he ...

(Inaudible)

Steve Schaefer: He just didn't want to have a...he didn't want to put that on you to do a presentation...

Councilwoman Brinkerhoff-Riley: Well let me ask a question because right now the IURC has issued an order and what's before us are presumably the bonds at a certain rate. It's really only if we vote it down and the offered financing, the alternative financing that is offered to the City exceeds that amount currently right now, that would actually trigger our desire to appeal the decision because it would throw off the 10% calculation and so my question is if we wait with that information when that finance agreement is *(Inaudible)*, if we vote this down and the finance agreement, the alternative financing is presented to us at some percentage rate that exceeds what we have seen analyzed, is that a material change that would create standing for us or a basis for something to be filed and...or...and could we perhaps not file the Notice of Appeal because that's really the issue, right?

Councilman O'Daniel: But if we don't appeal within 30 days then we may waive our right to do so.

Councilwoman Brinkerhoff-Riley: Okay, I just...I was just trying to...I wondered if...because that's really a material change in what's been contemplated.

Councilman O'Daniel: *(Inaudible)* is not when *(Inaudible)*.

Councilwoman Brinkerhoff-Riley: Okay, okay.

Counsel Danks: That change may give the Council other remedies before the Commission but I don't know, I just don't know. I think to play it safe it would probably be crucial...

Councilwoman Brinkerhoff-Riley: Yeah, I think we should file.

Counsel Danks:...to go ahead a file a Notice of Appeal just to preserve the deadline...

Councilman O'Daniel: I think we have to vote on this as a body politic, so to speak, in order to do that before...

President Robinson: Before you make that motion I think Councilman Weaver has something.

Councilman Weaver: I was under the impression that Johnson...they wanted to come before us on May 6th or something so should we maybe schedule a special meeting to address that?

And then my second...if Mr. Garrett is doing this as a private citizen, is he getting confidential information about this?

Counsel Danks: I can tell you that Mr. Garrett has been instructed and the City has been informed that anytime he's requested information, he has to disclose whether or not he's acting on behalf of Council and if he is, he is and if he's not he has to disclose that. Now I've not heard of any violations so I'm going to assume that any information that he received to formulate his opinions to certain members of the Council were based on an open door request for public records. I think that because of the time limitations if we are going to pursue an appeal, they are very stringent and they don't...they're not inclined to give us extensions and they certainly do not forgive you for missing a deadline. I think the special meeting is an excellent idea for Johnson Controls.

President Robinson: May 6th? I won't be here but you can have it. May the 6th...

Counsel Danks: Our special meeting doesn't necessarily have to fall on Monday either, I mean you can schedule it...

President Robinson: I'm on vacation that week. And you're on vacation the week of May *(Inaudible)* aren't you?

Counsel Danks: You'll want a special meeting for a presentation on Johnson Controls, is that what I'm hearing?

President Robinson: No, that's what Stephanie said she wanted.

Councilman O'Daniel: Well I think that's what Allen Mounts had suggested.

President Robinson: But yeah, he's prepared for May the 6th.

Councilman O'Daniel: Yeah, in all fairness to him and I know he's not here to defend himself on this but I'm comfortable enough to say that that's been his request.

Councilman Adams: Well I was under the impression he was going to come tonight. I asked him for, I'll let you guys all know, I asked him for an Executive Summary two or three weeks ago of whatever version is existing. Whether it's the third or fourth version, I'm not quite sure.

Counsel Danks: Well I guess my concern though is two-fold. One, I think that for me to proceed with perfecting the appeal, not to file my notice so much, although I would like to have a vote on that too but certainly to perfect the appeal, I think that I need a Council vote on that and it would seem to me that the members of the Council will want some kind of presentation so they can decide whether or not they want to appeal that ruling so I think that Councilman Weaver's suggestion of a special meeting, which could be held at any time, it doesn't have to be done on a Monday, but any time. If you could expedite that process, because if this Council instructs me to perfect the appeal, I need as much lead time as possible. It's very, very time consuming to do that.

Councilman O'Daniel: Is it 30 days from the notice? Is that what it is?

Counsel Danks: It is. I have to have it filed within 30 days.

Councilwoman Mosby: So we're looking at voting on an appeal before we even have all the information.

Councilman Adams: No, no...

Counsel Danks: Well that's what I...

Councilman O'Daniel: (*Inaudible*) and you know, I mean sometimes, you know you put money aside for a rainy day and you may not have to use it, well that's sort of what we're doing here. We're keeping an option on the table.

Councilwoman Mosby: Okay so we're putting the option out there in case we need to actually do the appeal, okay.

Counsel Danks: The appeal would not be done without Council votes. This...I think that they're suggesting that I be given permission to file a notice.

Councilwoman Mosby: So the appeal would not actually be done without us holding another vote.

Counsel Danks: We would file a Notice of Appeal but the appeal would not be perfected without another vote before the Council.

Councilwoman Mosby: Okay

President Robinson: Can we have a special meeting on...everyone look at their calendar on May the 2nd on a Thursday? Therefore all Council members will be in town I think.

Councilman O'Daniel: That's a Thursday?

President Robinson: May 2nd? Yeah that's a Thursday.

Councilman O'Daniel: 5:30?

President Robinson: Can we start a special meeting at an earlier time...5:00 or...

Councilwoman Brinkerhoff-Riley: Let's start at 5:00.

President Robinson: Can we start it at 5:00? Is May the 2nd okay with everyone? May the 2nd at 5:00 Laura will send out the special notice. Is that...

(*Inaudible*)

Counsel Danks: If I may...

President Robinson: Sure

Steve Schaefer: (*Inaudible*) schedules and, I mean, we want to be as accommodating as possible but I just...we have a lot of people coming in from (*Inaudible*)

Counsel Danks: And I agree...can we tentatively schedule it for that date and...

President Robinson: We can give an alternate date also.

Councilman O'Daniel: May the 1st is an alternate date?

President Robinson: Yeah, May the 1st or May the 2nd, Wednesday or Thursday.

Councilman O'Daniel: I guess we'll have to know that by...tomorrow?

President Robinson: He'll let us know tomorrow. If you can let Laura know by tomorrow and then she can send out a notice to all the Council members to let them know and 5:00 will be the time.

Councilman O'Daniel: Then I'll make the motion then to instruct the City Council Attorney to file a Notice of Appeal on behalf of the City Council on the Johnson (*Inaudible*)

Councilman Friend: I'll second it.

President Robinson: All in favor say aye. Opposed? So ordered.

Committee Reports...

Councilman Friend: Madam President...

President Robinson: I'm sorry.

Councilman Friend: Can I ask...let me ask the Administration on question if I could. Steve, can I ask you one question please?

Now I understand next week we are going to be talking about the hotel. Next Monday we have a special meeting. Now, where's that hotel going to be located?

Steve Schaefer: Right over there.

Councilman Friend: Where the garage was.

Steve Schaefer: Ahuh.

Councilman Friend: Now, it's been three years now since one of the contractors tore down that garage and also it's been three years since they tore down the Executive Inn of which they're still owed \$70,000 for tearing down the Executive Inn. They're still due \$30,000 for securing the perimeter of that demolition. And then they were also entered into a deal to tear...to take down the garage. At this moment, they're owed \$355,000. It's been going on for three years.

Now these people employed people from this community and if we're going to have a hotel put on the land site that been unjustly enriched, I think I got an ethical problem about that. That's just me. Now what I'd like to know is what is the Administration planning to do to get this thing resolved?

Steve Schaefer: Well, Nick Cirignano is here from the City Attorney's Office but it's a legal proceeding that's ongoing. I know that you say...

Councilman Friend: *(Inaudible)*

Steve Schaefer: I get it. They attorneys have been talking and Nick will provide an update. Klenck has been doing work for the City. They've had the demo contract for Roberts Stadium so...

Councilman Friend: I understand.

Steve Schaefer: They continue doing work and projects but I'll let Nick provide an update because he's got better knowledge on the subject.

Nick Cirignano: Nick Cirignano, Ziemer, Stayman, Weitzel and Shoulders. I apologize. My knowledge is actually somewhat limited on this topic because I was actually here tonight for the U of E bond matter and just kind of got pulled up here on this but I'm thrilled to be here as you might imagine.

What this goes back to is I believe the amounts that Councilman Friend complains about on behalf of Klenck relate to a contract that Klenck had with Woodruff. I think we all know that Woodruff failed in his efforts toward the hotel. After that failure, the City did engage Klenck for certain demolition work, which resulted in a \$735,000 payment to Klenck for such efforts. Klenck is misguided in believing that the City owes it that money. Klenck should be looking to Woodruff. We don't know if it's ever looked to Woodruff but that's who its contract was with. The City fully...fully paid Klenck for which it contracted with Klenck.

So I'm sorry that they feel slighted or that they feel as though it's the City's obligation but it simply is not.

Councilman Friend: So it's okay for us to take that ground with the improvements on it. Had we not tore that down, we would have had to tear it down now where we can put the hotel there.

Nick Cirignano: It's not our firm's practice to advise clients to pay bills for which they are not legally responsible.

Councilman Friend: What about ethically?

Councilwoman Brinkerhoff-Riley: *(Inaudible actually... I'm sorry.*

Counsel Danks: May I ask a question?

Councilman Friend: Yeah. *(Inaudible)* Counsel has a question he'd like to ask.

Counsel Danks: Well actually I'm advising the Council. I've been contacted by Klenck's attorney, Jeffrey Ahlers, and he also claims that his client is owed over \$300,000. The demolition work, it is my understanding that the City does not deny that that amount is owed. Is that correct?

Nick Cirignano: I don't know what bill you're talking about. Regarding work that we contracted with Klenck, Klenck was paid in full. I don't know what work you might be referring to, I haven't...like I said, I was here for the U of E bond matter tonight. If you want a more fuller description...

Counsel Danks: No, that's fair, that's fair.

Nick Cirignano:...I'm happy to come back.

Counsel Danks: (*Inaudible*) the Council, it is my understanding that Klenck did this demolition work, both the garage and the old Executive Inn. There is not a dispute as to them being owed the money. The dispute is who should pay it and I think Klenck's attorney's position is that we, the City of Evansville, benefited from the demolition work. Obviously you couldn't construct a new hotel on top of an existing structure, and therefore the City should pay that. That's what I've been told by Klenck's attorney.

I've also been told that the City is about to be sued for that. Now whether that's a meritorious lawsuit or not, I don't know and apparently you don't either. But to advise the Council, it's my understanding that we're on the brink of being...the City is on the brink of being sued for over \$300,000 for demolition work that's not been paid for.

Councilman O'Daniel: Is there an encumbrance on the land?

Nick Cirignano: You mean a mechanics lien?

Councilman O'Daniel: Ahuh

Nick Cirignano: No, and in fact...

Counsel Danks: They are not allowed to have that...

Nick Cirignano: No, on public property, no.

Counsel Danks:...on public property so they're kind of out there with no protection at this point, Klenck.

Nick Cirignano: Once again, I believe those amounts are the obligation of Woodruff, not the City of Evansville.

Steve Schaefer: Councilman Friend, if you like we can have Rhett Gonterman get in touch with you. He's the attorney that's been handling the case and can just kind of give you an update. He's out this week but has more intimate knowledge of the conversations with Kahn, Dees, so.

Councilman Lindsey: If we give that land to...I guess that's what we're going to do, give it away...

Councilman Friend: Yeah, that's my understanding.

Councilman Lindsey: When it becomes private, can they come back sue the company that built on it?

Counsel Danks: I don't think so because the work was done while it was public land and the laws are such that he cannot file a lien or a mechanics lien on public property so...

Councilman Lindsey: But I mean it would be private then, right, if it...

Nick Cirignano: We're well past any time frame for filing a lien.

Councilman Friend: I guess what...what's irritating about it is that John Kish stood right in front of us there, maybe three years ago, when this was brought up, okay, and he knew about it going on as it went down and I think as a society, okay, I understand about the legalities, I get all that stuff, but when you talk about ethical conduct, you've got to look and see we got unjustly enriched on that. To me, I have a hard time dealing with things like that. I just do. That's my...that's my opinion.

Councilman O'Daniel: Let's let the lawyers work that out.

Councilman Friend: Well thank you very much Counselor.

(Laughter)

Councilman O'Daniel: That's uncalled for. That was terribly uncalled for.

Councilwoman Mosby: If you can...Steve, if you could get that information to us, I mean, I would just like to know what is outstanding out there, you know, whether or not...and then how much Klenck was paid.

Steve Schaefer: Okay.

Councilwoman Mosby: Thank you.

Councilman Weaver: I'd like to.

Stan Wheeler: John, excuse me. John, you mentioned the securing of the lot.

Councilman Friend: Yes.

Stan Wheeler: I am your representative on the ERC...

Councilman Friend: Yeah.

Stan Wheeler:...and Klenck is getting paid for that. We have made several payments to them.

The fence, the rental of the fence and Klenck maintaining the fence costs the City \$900.00 a month.

Councilman Friend: Well I think you're talking about...I think they're talking about the securing the site of the Executive Inn.

Stan Wheeler: That's what I'm...well the

Councilman Friend: No, no, no not the other side, the other side.

Stan Wheeler: The part...the garage...

Councilman Friend: The garage.

Stan Wheeler:...where Klenck tore the building down and didn't get paid. But that lot there on 7th, 6th, and Walnut and Locust, the ERC has put the fence up to keep people from falling in the hole was a...that fence rental to the ERC is \$900.00 a month for Klenck to rent it and maintain it.

Councilman Friend: Thanks Stan.

Councilwoman Mosby: On a...I'd like to bring up another topic if you don't mind. On Thursday, I received an email from Mr. Danks...I appreciate it...on this forensic accountant. Have we gone about, as a body, hiring this forensic accountant? Has anybody bid on it? Is this whose been hired?

Counsel Danks: Yes. I don't recall the date of the meeting but Dr. Adams...Councilman Adams made a motion that was approved that a request for proposals would be solicited. They would be received and a decision would be made by certain members of the Council to approve somebody to do that. That process has taken place and it's my understanding there are roughly 10 or 12 concerns that we've been referring to as irregularities. As those packets are prepared, they've been forwarded to this accounting firm. To date, I believe there have been six. But I have sent all of that, all those communications to all Council members by way of email, including the selection of the firm and so you should have received that. If you have not I apologize. When I send out emails I double check to make sure everybody is on it.

Councilman O'Daniel: I was going to ask, on a separate issue, Councilman Friend, where are the McGladrey audits (*Inaudible*).

Councilman Friend: I...we met with the Mayor, probably been three weeks ago, something like that, and he said they're still, I guess they're still underway with the McGladrey assessment.

President Robinson: Steve probably (*Inaudible*).

Councilman Friend: Yeah Steve, what...maybe you can give us more insight on that.

Steve Schaefer: They're...it's the same. They're in the final stages of putting that report together and their findings and so forth so hopefully we'll have the final product soon.

Councilman Friend: Yeah and by the way too, for the...the report's been issued but it won't come out for another 30 days. The State Board of Accounts had their Exit Conference on the Ford Center and it's got to stay under wraps until we get I guess the final...

Steve Schaefer: Oh, the Ford Center.

Councilman Friend: The Ford Center, yeah.

Councilman Weaver: So were there, was there advertisement for the bids to be placed and what was the scope of work.

Counsel Danks: Well pursuant to *(Inaudible)* you don't need to advertise a bid for services which is what this was but...and I don't have the...I know that Councilman Adams specifically hand wrote...he wrote out his motion, he read his motion, that motion was approved. I don't have that before me but I know that we followed the letter of the motion and that a forensic accounting firm was selected. I think we sent proposals to either four or five of those firms and they sent us...they each responded, giving their rates, their estimates as to what it would cost for this preliminary review and also their qualifications for conducting the type of work that was requested. Of those that responded, one of the four or five was selected.

Councilman Weaver: So the motion was to put out bids, the scope was identified and then the times and the fees.

Counsel Danks: Correct.

Councilman Weaver: So all that was answered?

Counsel Danks: Yes.

Councilman Weaver: Should that have been talked about in a public forum before we selected?

President Robinson: Correct me if I'm wrong but I thought the motion that Councilman Adams made was that we would solicit proposals and then myself and Councilman Friend would look over those proposals and make a decision.

Councilman Weaver: What I just read, basically, I summarized the motion for you...what I just said. Okay.

Counsel Danks: I'm sorry, was that?

(Inaudible)

President Robinson: Yeah. But it did...it did not have to...

Councilman Weaver: It just would have been nice to know what the fees are up front...

Counsel Danks: Councilman Weaver, all that...

Councilman Weaver:...and the scope of the work and the questions.

Counsel Danks:...all of that came from my office. My office always double if not triple checks to make sure those emails were not returned from Council members. The firm that was selected, that was *(Inaudible)*, that was sent to you as well as the response for Request for Proposal, explaining their hourly rates...it's structured for partners versus non-partners. They estimated the initial cost to be \$2,500. But anyway, that was furnished to you. And then as I send these additional packets to them for their examination, the cover letter from my office to that firm is always copied to all Council members. So if you've not received that, 1) I apologize and 2) double check, but if not, we have a problem with your email address but I...

President Robinson: Well...I know...would Councilman...I mean...in all due respect to the City Council Attorney, I always look to see if all...if everyone is getting the emails because I know there's some concerns that some people don't get emails. And so those two emails that you sent out concerning that, everyone was emailed on that. Now whether they received it or read it or not...

Counsel Danks: We try to do that, but obviously, you know, from time to time it might not occur. I recall, on a totally unrelated issue, at one point in time I sent something out and you indicated to me...we were having lunch, and you didn't receive it, you started searching and I think you located it. But anyway if our emails to you *(Inaudible)* let me know and we'll fix that.

President Robinson: Is there anything else under Miscellaneous? Okay.

Randy Jones: I brought you...Randy Jones, Evansville, Indiana. I think you all know me by now. I brought you a paper showing just, as a side note that was taken from the Victory where the cigarettes were being smoked outside the Victory. I figure ya'll could probably take care of that seeings there's a smoking ban and there's not supposed to be any smoking outside any public buildings like that.

(Inaudible)

Randy Jones: No, that was the Victory Theater. That was on Main Street...Lowes Theater. That smoking, that ashtray sitting right outside. It's used all the time.

But my main concern, if you look at the picture, I'm told by everybody there's lots and lots of parking in Evansville. There's not a lot of parking for what we've got and I'm not even talking about the motel. I'll be here next week for that, you can bet on that one. But that's where people had to park for the Hose & Guns this week. All the way back there. I went to the Forth Street parking. It had the top floor was not full; the rest of it was full. They had to park almost to the Center and this wasn't even a sold-out event. So when you add all this that you're wanting to add now, plus if you have a Victory Theater...I call it the Victory Theater, but if you had an event there, you had a convention here and you had the Ford Center, I don't know where people are going to park. This was just for the Ford Center. And if you notice, I mean this all the way back to the Community Center that people were having to park. I did some interviews. You know I'm always told there's plenty of parking downtown and apparently...I think you all should go out sometime when there's one of these events and try to park. And if its pouring down rain...and if you want to see how a convention center should do go to Casino Aztar. Ya'll love Casino Aztar. Go the *(Inaudible)* and see how a convention center should be built. There's a parking garage, you go into the convention center, you go to the restaurants. You don't have to

walk three miles to get to the place in the pouring rain if there's a convention and I've been to many conventions. Seriously. I don't look like it but I've been to several conventions. I've been to Chicago. Consumer electronics conventions. Las Vegas. There's parking usually within a short distance that I don't have to get wet and soaking wet to go there and the first business that brings a convention here, and I don't care how big it is or how...what it is, if they've got a thousand people and there's no parking and they're having to walk half way down Main Street to go there or go to Fourth Street and the people are getting wet, they're not going come back here the next time.

President Robinson: Okay...

Randy Jones: Maybe it's just me but there's just not enough parking in this place.

Councilman Friend: What happened last Saturday night there was three high school proms held at the same time at the Centre. My grandson was at one of them cause I asked about that. There was three of them at the Centre. I noticed that cause I was at the Guns & Hoses. It was really crowded downtown.

Randy Jones: *(Inaudible)*

Councilman O'Daniel: But Mark or but John here's the thing, that's a good problem to have. But I don't think we build a 500 car-parking garage at 1.5 million dollars when it might be three or four times a year.

Randy Jones: Well we can discuss that next year. I understand. We can discuss that next year when we're going to build a 34 million dollar luxury apartments for rich people to be living downtown so we can discuss that next week when the thing...I'll bring that part up too.

(Inaudible)

President Robinson: Okay...

Randy Jones: There's a 250 car garage what I understood to be built for 250 people that's gonna live at the motel or gonna be at the motel.

President Robinson: Well we'll see you on the 29th.

Randy Jones: We'll be here on the 29th.

President Robinson: Okay thank you.

COMMITTEE REPORTS:

FINANCE COMMITTEE:

Re: Ordinance F-2013-4

Date: May 13, 2013

Time: 5:20 p.m.

Notify: Russell G. Lloyd, Controller

CHAIRMAN JOHN FRIEND

Appropriation, transfer, repeal and
and additional appropriation of funds.

PUBLIC WORKS COMMITTEE:
Nothing scheduled at this time.

CHAIRMAN O'DANIEL

A.S.D. COMMITTEE:
Nothing scheduled at this time.

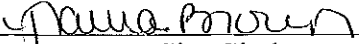
CHAIRWOMAN RILEY

ADJOURNMENT

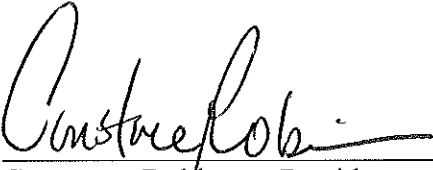
President Robinson: Thank you. Can I have a motion for adjournment?

Councilman O'Daniel moved and Councilwoman Mosby seconded the motion to adjourn.
Voice Vote. So Ordered.

Meeting adjourned at 6:42 p.m.



Laura Brown, City Clerk



Constance Robinson, President